

1 Gary S. Lincenberg - State Bar No. 123058
 2 glinenberg@birdmarella.com
 3 Ray S. Seilie - State Bar No. 277747
 4 rseilie@birdmarella.com
 5 Michael C. Landman - State Bar No. 343327
 6 mlandman@birdmarella.com
 7 BIRD, MARELLA, RHOW,
 8 LINCENBERG, DROOKS & NESSIM, LLP
 9 1875 Century Park East, 23rd Floor
 10 Los Angeles, California 90067-2561
 11 Telephone: (310) 201-2100
 12 Facsimile: (310) 201-2110

13 Attorneys for Defendant Stephen Keith
 14 Chamberlain

15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 vs.

20 MICHAEL RICHARD LYNCH AND
 21 STEPHEN KEITH CHAMBERLAIN

22 Defendants.

23 CASE NO. 3:18-cr-00577-CRB

24 **Defendant Stephen Chamberlain's Reply in
 25 Support of Motion in Limine to Preclude
 26 Admission of Evidence in Violation of
 27 Confrontation Clause**

28 Date: February 21, 2024

Time: 2:00 p.m.

Place: Courtroom 6

Assigned to Hon. Charles R. Breyer

29 The Government states that the “odds of a true *Bruton* problem here are low.” However,
 30 the examples provided by the Government themselves present a *Bruton* problem. Without
 31 knowing which of the “few thousand pages” of Dr. Lynch’s prior testimony the Government
 32 intends to use, it is impossible for Defendant Stephan Chamberlain or the Court to know whether
 33 additional *Bruton* problems exist. Given the mountain of work that needs to be done between now
 34 and March 18, it is unreasonable to expect Mr. Chamberlain to review *all* of Dr. Lynch’s prior
 35 testimony with an eye towards whether the spillover prejudice caused by the admission of such
 36 statements—or a portion thereof—would implicate his Confrontation Clause rights.

37 Requiring the Government to provide notice of specific testimony it intends to use is

1 reasonable. Defendant Michael Lynch concluded his testimony in the related UK proceeding on
 2 August 1, 2019. Transcripts of Dr. Lynch's testimony were made available to the Government no
 3 later than January 2020. Declaration of Gary Lincenberg ¶ 2. Yet the Government's opposition
 4 indicates that it is still unwilling to identify which portions of these 21 days of trial testimony and
 5 multiple sworn witness statements of Dr. Lynch it seeks to introduce in its case-in-chief. The
 6 Court has previously indicated that this should not be a trial by surprise. There is no justification
 7 for the Government resisting the pretrial disclosure of the potential *Bruton* statements it intends to
 8 offer in its case-in-chief.

9 **I. THE GOVERNMENT'S EXAMPLES ARE A PROBLEM**

10 The Government's own examples highlight Mr. Chamberlain's concern that the
 11 Government will introduce statements in violation of his Confrontation Clause rights. One of the
 12 Government's allegations against Mr. Chamberlain is that he was involved in providing false
 13 information to Autonomy's external auditors regarding the extent to which a hardware company,
 14 EMC, had agreed to invest money in furtherance of its relationship with Autonomy. Lincenberg
 15 Decl. ¶ 3. When asked to identify who told Lynch of EMC's intended investment, Lynch said, "I
 16 would expect it to be a combination of Dr. Menell, Mr. Hussain, and Mr. Chamberlain[.]" Opp. at
 17 5:9-11. Here, Dr. Lynch is pointing the finger directly at Mr. Chamberlain.

18 If given the opportunity to cross-examine Dr. Lynch, Mr. Chamberlain would confront him
 19 on the fact that, of the individuals identified by Dr. Lynch, Mr. Chamberlain was the least likely to
 20 have first-hand knowledge of what EMC had or had not agreed to do. Mr. Chamberlain would
 21 confront Dr. Lynch on the fact that, as a finance team member, he was not a party to negotiations
 22 with EMC. Rather, he relied on information transmitted to him from others at Autonomy. Mr.
 23 Chamberlain would also cross-examine Dr. Lynch on the infrequency of their communications,
 24 which would undermine any suggestion that he was the individual who spoke with Dr. Lynch on
 25 this issue. But Mr. Chamberlain may not have this opportunity and would only be "protected" by
 26 the Court's limiting instruction that would only serve to highlight Dr. Lynch's inculpatory
 27 statement.

28 The Government's proffered introduction of this statement raises an additional concern

1 that the Government may use Dr. Lynch's prior testimony to inculpate Mr. Chamberlain. ***This is***
 2 ***plainly impermissible under the Confrontation Clause.*** *Crawford v. Washington*, 541 U.S. 36, 61
 3 (2004). Dr. Lynch's testimony that he received allegedly false information from Mr. Chamberlain
 4 has no inculpatory effect as to Dr. Lynch. Rather, it tends to exculpate Dr. Lynch from being the
 5 source of the false information. The only reason the Government would want to introduce this
 6 statement is to inculpate Mr. Chamberlain as the source of the false information.

7 The same is true for the Government's proffered introduction of Dr. Lynch's testimony
 8 that Mr. Chamberlain approved a letter to the UK's Financial Reporting Review Panel ("FRRP").
 9 Opp. at 5:13-15. The Government alleges in its Rule 404(b) notice that certain letters to the FRRP
 10 were false. Decl. of Lincenberg ¶ 4, Ex. 1. The only purpose of the Government introducing Dr.
 11 Lynch's testimony that Mr. Chamberlain approved one of these letters would be to inculpate Mr.
 12 Chamberlain. Had Mr. Chamberlain been able to examine Dr. Lynch on this, he would have been
 13 able to clarify that another Autonomy employee was responsible for the letters to the FRRP. These
 14 examples highlight the concern that the Government may violate Mr. Chamberlain's
 15 Confrontation Clause right by introducing Dr. Lynch's prior testimony for the purpose of
 16 inculpating Mr. Chamberlain.

17 Make no mistake, these statements are "directly accusatory" under *Bruton* as they refer
 18 "directly to the defendant." *Samia v. United States*, 599 U.S. 635, 653 (2023) (quoting *Gray v.*
 19 *Maryland*, 523 U.S. 185, 194, 196 (1998)). As explained in *Gray*, "certain powerfully
 20 incriminating extrajudicial statements of a codefendant—those naming another defendant—
 21 considered as a class, are so prejudicial that limiting instructions cannot work." *Gray*, 523 U.S. at
 22 192 (internal citations and quotation marks omitted).¹ In a joint trial, the only way the Government
 23 can use this inculpatory statement and statements like it is to redact it to remove references to Mr.
 24 Chamberlain. *Id.* That is the only way to avoid the "special prejudice" identified in *Bruton*. *Id.*
 25

26
 27 ¹ In addition to the directly incriminating nature of at least a portion of Dr. Lynch's prior
 28 testimony, the sheer volume of such testimony will make it harder for the jury to follow any
 potential limiting instruction not to consider it in assessing Mr. Chamberlain's guilt. *See United*
States v. Addonizio, 405 U.S. 936 (1972) (Douglas, J., dissenting in denial of certiorari).

1 The Government is wrong to rely on *Richardson* to suggest that these statements are not
 2 incriminating on their face. Opp. at 3:12-13. *Richardson* involved a statement that was redacted to
 3 omit “all reference to [the defendant]—indeed, to omit all indication that *anyone* other than [the
 4 other co-defendants] participated in the crime.” *Richardson*, 481 U.S. 200, 203 (1987). Mr.
 5 Chamberlain would likely agree that if Dr. Lynch’s statements are redacted to remove all
 6 references to Mr. Chamberlain then they would be consistent with the reasoning in *Richardson*
 7 and *Gray* and would no longer pose a Confrontation Clause concern. But Mr. Chamberlain cannot
 8 understand the overall prejudicial effect of the admission of Dr. Lynch’s statements in a joint trial
 9 without knowing what statements the Government intends to use.

10 There is a need to address these issues as soon as possible.² In order to evaluate the
 11 Government’s use Dr. Lynch’s prior testimony, including the purpose for which it is being
 12 admitted and the potential direct or spillover prejudicial effect to Mr. Chamberlain, the Court must
 13 evaluate *all* of the testimonial statements of Dr. Lynch that the Government intends to introduce.
 14 This is not something that can be addressed mid-trial on a piecemeal basis.³

15 II. PRETRIAL IDENTIFICATION IS REASONABLE

16 The Government appears to have been in possession of Dr. Lynch’s prior testimony for
 17 over three years. Lincenberg Decl. ¶2. Government counsel are no strangers to the fact pattern

19 ² In reply to the Government’s opposition, Mr. Chamberlain focuses on the Government’s
 20 proffered examples. He does not concede that these are the only examples of Dr. Lynch providing
 21 directly incriminating testimony as to Mr. Chamberlain. It is not in Mr. Chamberlain’s interest to
 22 comb through Dr. Lynch’s prior testimony to identify for the Government what he believes is
 23 inculpatory as to him. Nevertheless, it is likely that there are prior statements of Dr. Lynch that are
 24 more incriminating as to Mr. Chamberlain than selected by the Government. We will not know
 25 until the Government identifies the statements it seeks to introduce.

26 ³ The examples cited by the Government highlight an additional concern not previously raised
 27 by Mr. Chamberlain. From the Government’s proffer, it appears that the Government seeks to
 28 introduce the questions posed by HP’s lawyers and Dr. Lynch’s response to such questions. For
 example, the Government cites to a portion of Dr. Lynch’s testimony where HP’s lawyers “asked
 Lynch to admit that Autonomy (through Chamberlain) ‘was trying . . . to maximise the amounts
 that could be collected to sales and marketing[.]’” Opp. at 4:21-24. The prejudicial manner in
 which HP attorneys cross-examined Dr. Lynch should itself be excluded as hearsay, irrelevant,
 and in violation of Rule 403. Allowing such statements will have the effect of admitting HP’s
 version of events into evidence based on out-of-court statements of its attorneys.

1 surrounding this case. Surely the Government has reviewed this testimony and identified portions
 2 that it believes will be helpful to proving its case.

3 From the first time the parties discussed a trial date, the Court indicated that it would
 4 require the Government to preview its case-in-chief in order to facilitate a trial date that was
 5 earlier than that which was proposed by the parties. ECF No. 191 at 10:21-11:5 (Transcript of
 6 June 27, 2023 hearing). Now, the Government claims it is unreasonable to provide pretrial notice
 7 in the manner requested by Mr. Chamberlain. The Court should require more from the
 8 Government. *See United States v. Blackwell*, 2007 WL 9698055, at *1 (D. Alaska June 22, 2007)
 9 (ordering Government to provide pretrial notice of any co-defendant's statements that inculpated
 10 his co-defendant).

11 **III. CONCLUSION**

12 For the foregoing reasons, Mr. Chamberlain respectfully requests that the Court preclude
 13 the admission of Dr. Lynch's testimonial statements in this joint trial unless the Government
 14 provides pretrial notice of the specific statements it intends to introduce in its case-in-chief
 15 forthwith.⁴

16
 17 DATED: February 7, 2024

Gary S. Lincenberg
 Ray S. Seilie
 Michael C. Landman
 Bird, Marella, Rhow,
 Lincenberg, Drooks & Nessim, LLP

21 By: /s/ Gary S. Lincenberg

22 Gary S. Lincenberg

23 Attorneys for Defendant Stephen Keith
 24 Chamberlain

25
 26 ⁴ Mr. Chamberlain's original motion requests at least 30-days' pretrial notice, which would
 27 require notice be provided on or before February 17, 2024. Given the Court will be hearing
 28 argument on this motion on February 21, 2024, Mr. Chamberlain seeks an order that the
 Government provide the requested pretrial notice on or before February 28, 2024. This will
 provide Mr. Chamberlain with sufficient time to raise any issues with the Court prior to opening
 statements on March 18, 2024.